JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2005-09-15-03
ID: MV-05-002-K
DATE: SEPTEMBER 15, 2005
DISPOSITION: DENIED
TAX TYPE: IRP
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

By letters dated December 29, 2004, the Division issued assessments of net registration fees against Protestant for the 200112 and 200212 registration years. Protestant filed a timely written protest to the assessments by letters dated January 25, 2005. Protestant did not request an oral hearing in the letters of protest.

On February 15, 2005, the Division forwarded its file in this matter to the Office of the Administrative Law Judges (ALJ's Office) for further proceedings pursuant to the Oklahoma Vehicle License and Registration Act[1], the Oklahoma Tax Commission Motor Vehicle Rules in regard to Registration pursuant to the International Registration Plan[2], the International Registration Plan ("IRP"), the IRP Uniform Operation Audit Procedure Guidelines, the IRP Policy and Procedures Manual, Uniform Tax Procedures Code[3], and the Rules of Practice and Procedure Before the Oklahoma Tax Commission[4]. The case was docketed as Case No. MV-05-002-K and was assigned to ALJ, Administrative Law Judge.[5]

A prehearing conference was scheduled in this cause for April 11, 2005, by *Notice of Prehearing Conference* issued March 7, 2005.[6] Protestant did not respond to the *Notice* either orally or in writing, nor appear at the prehearing conference. Notice was thereafter served on the parties that the record in this cause would be closed and the case submitted for decision upon the filing of a verified response to protest by the Division in accordance with Section 221(D) of the Uniform Tax Procedure Code.[7] Protestant did not respond to this notice.

The *Division's Verified Response to Protest* was filed on April 19, 2005. Attached to the *Verified Response* were Exhibits A through D. The record in this cause was closed and the case was submitted for decision on May 16, 2005.

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[1] 47 O.S. 2001, § 1101 et seq.

[2] Rules 710:60-4-1 through 710:60-4-20 of the Oklahoma Administrative Code ("*OAC*").

[3] 68 O.S. 2001, § 201 et seq.

[4] *OAC*, 710:1-5-20 through 710:1-5-47.

[5] *OAC*, 710:1-5-22(b).

[6] *OAC*, 710:1-5-28.

[7] *See*, *OAC*, 710:1-5-28(c).

FINDINGS OF FACT

Upon review of the file and records, including the *Division's Verified Response to Protest* and attached exhibits, the undersigned finds:

1. Protestant is a registrant under the provisions of the International Registration Plan ("IRP"). Exhibit B.

2. At all times relevant herein, Protestant's base jurisdiction for purposes of the IRP was the State of Oklahoma.[8] Exhibit B.

3. Protestant is a California resident with a place of business in Bakersfield, California. Exhibit B.

4. Pursuant to the provisions of the IRP, including Section 1606, and the IRP Audit Procedure Manual, a joint audit of Protestant's apportioned registration applications for the 200112 and 200212 registration years was conducted by the California Department of Motor Vehicles and the Tax Commission to determine the degree of compliance with the apportioned registration rules and regulations and the proper payment of fees to all IRP jurisdictions in which Protestant fleet was apportioned. Exhibit B.

5. The IRP Audit Report prepared by the California Department of Motor Vehicles dated December 27, 2004, in the category captioned "General Information" provides in part:

> For registration year 2001, the registrant filed a renewal application with California for account number X999 requesting registration renewal for 11 vehicles. Before the registration renewal was completed by California, the registrant decided to base its vehicles in Oklahoma rather than California. The Oklahoma application was filed in May 2001, but the fees were paid as of January 1, 2001. Two vehicles that 2001 registration was initially requested from California were not included in the vehicles based in Oklahoma. In June 2001, these two vehicles were registered on California account number X999 for 2001, and the fees were paid as of January 1, 2001. The miles reported on the applications submitted to California and Oklahoma were entirely different.
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> For registration year 2002, the carrier apportion registered its vehicles with Oklahoma as the base jurisdiction. The 2001 registration expired on December 31, 2001, and Oklahoma required that the 2002 renewal registration fees be paid by March 1, 2002. The registration fees for the 2002 Oklahoma registration renewal

[8] Protestant operated under IRP account number OK 99999 for the 200112 and 200212 registration years. Protestant was proportionally registered in State of California under account number X999 during registration years 2003 and 2004.

> were paid on March 8, 2002. On March 8, 2002, prior to the renewal registration fees being paid, California Highway Patrol cited one of the carrier's vehicles for operating in California without being registered. The department assessed full California fees on the affected vehicle, equipment number 167 (V.I.N. #XYZ123). As full California fees have already been assessed for this vehicle, the vehicle is excluded from California fee calculations for registration year 2002 in this audit.
>
> The table below summarizes the reported miles and fleet size information for Oklahoma account 99999 for the audit years.

	2001	2002
Reported Actual Fleet Miles	889,075	1,164,306
Number of Tractors	24	28
Number of Trailers	12	0
Number of Jurisdictions (Actual Miles)	8	7
Reported CA Percents	11.990	5.000

Exhibit B.

6. The IRP Audit Report in the category captioned "Sampling Procedures" provides:

> Due to the lack of summaries, the recorded information on the source documents was summarized during the audit for a sample number of documents. For registration year 2001, trip and load documentation for apportion registered vehicles contained in payroll envelopes covering the period October 3, 1999, through December 26, 1999, were summarized. For registration year 2002, trip and load documentation for apportion registered vehicles contained in payroll envelopes covering the period July 9, 2000, through September 30, 2000, were summarized. For registration year 2002, the time period available to select a sample was limited to July 1, 2000, through December 23, 2000, as payroll envelopes covering the period December 24, 2000 through June 30, 2001 were not available.

Exhibit B.

7. The IRP Audit Report in the category captioned "Observations and Audit Findings" provides in part:

> 1. IVDRs were not prepared for some trips. Additionally, for the mileage-reporting period covered by the years audited, payroll envelopes containing the source trip documents were not available for the period December 24, 2000, through June 30, 2001.

2. Monthly mileage summaries, quarterly mileage summaries, and yearly mileage reports were not available for the audit period.

3. The registrant reported actual miles for registration year 2001, however, the mileage reported does not reflect the carrier's operations and does not agree with the supporting documentation provided during the audit. Historical mileage for 396 trips made by apportion registered vehicles from trips included in the payroll envelopes covering the period October 3, 1999, through December 26, 1999, were summarized. The trip documents show a California operating percentage of 75.339%. The California operating percentage reported on the application filed with Oklahoma was 11.990%. The reported mileage is not supported by the source documentation, therefore, the trips summarized for the sample quarter were annualized and are used as the basis for the audit.

4. For registration year 2001, actual miles were reported for Louisiana, New Mexico, Oklahoma, and Texas where the records provided did not show any recorded movement. The reported actual miles for the affected jurisdictions are reclassified to estimates.

5. The registrant reported actual miles for registration year 2002, however, the mileage reported does not reflect the carrier's operations and does not agree with the supporting documentation provided during the audit. Historical mileage for 421 trips made by apportion registered vehicles from trips included in payroll envelopes covering the period July 9, 2000, through September 30, 2000, were summarized. The trip documents show a California operating percentage of 84.729%. The California operating percentage reported on the application filed with Oklahoma was 5.000%. The reported mileage is not supported by the source documentation, therefore, the trips summarized for the sample quarter were annualized and are used as the basis for the audit. Due to the lack of source trip documentation contained in payroll envelopes covering the period December 24, 2000, through June 30, 2001, any credits calculated for 2002 for jurisdictions are not reflected in the fees netted in accordance with IRP, Section 1704.

6. For registration year 2002, actual miles were reported for New Mexico, Oklahoma, and Texas where the records provided did not show any recorded movement. The reported actual miles for the affected jurisdictions are reclassified to estimates.

The audit revealed that the registrant operated the majority of the time in California during the audit period, but reported 11.990% and 5.000% for this jurisdiction for registration years 2001 and 2002,

> respectively. The Bakersfield area has served as its base of operations. The declaration of Oklahoma as the base jurisdiction does not allow the registrant to erroneously underreport the fleet miles and circumvent the payment of proper fees to the affected jurisdictions.
>
> The reported miles for registration years 2001 and 2002 are adjusted based on the supporting mileage records. These adjustments increase the reported California percentages for registration years 2001 and 2002 from 11.990% and 5.000% to 75.339% and 84.729%, respectively. These changes result in additional California fees totaling $51,200, not including interest and penalties.

Exhibit B.

8. As a result of the audit findings, the Division by letters dated December 29, 2004, issued assessments of net registration fees against Protestant for the 200112 and 200212 registration years in the amounts of $12,837.77 and $37,660.00, respectively. Exhibit B.

9. By letter dated January 25, 2005, Protestant timely protested the assessments, asserting: "[w]e never received an audit report, nor had an opportunity to respond to any claimed discrepancies." Exhibit C.

10. The audit documentation reflects multiple mailings to Protestant. Exhibit B. In addition, the audit documentation was mailed to Protestant at the address shown on its protest letters by the representative of the Division in this cause on March 4, 2005. Exhibit D. The documents were returned by the Postal Service on March 24, 2005, and re-mailed the same day to P.O. Box 9999, ANYTOWN, CA 99999, the address to which the letters of assessment were mailed. Exhibits B and D.

11. The amount in controversy is $50,497.77.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that:

1. The Tax Commission is vested with jurisdiction over the parties and subject matter of this action. 68 O.S. 2001, § 221(D), and IRP, Art. XVI, § 1608; incorporated by reference, *OAC*, 710:60-4-20(b)(1).

2. As a registrant under the provisions of the IRP, Protestant is subject to the audit procedures and policies set forth therein. IRP, Appendix F, Art. XVI.

3. The audit of a registrant under the IRP may be conducted by its/his base jurisdiction and/or the commissioners of the several member jurisdictions. IRP, Art. XVI, §§ 1600 and 1606.

4. The mileage percentages factor of a registrant may be recalculated as a result of an audit of the registrant's apportioned registration file. IRP, Policies and Procedures Manual, § 5030(4); incorporated by reference, *OAC*, 710:60-4-20(b)(3).

5. "Any registrant whose application for apportioned registration has been accepted shall preserve the records on which it is based for a period of three years after the close of the registration year" and "[s]uch records shall be made available to the Commissioner at his request for audit as to accuracy of computation, payments, and assessments for deficiencies or allowances for credits". IRP, Art. XV, § 1500.

6. An assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect. *OAC*, 710:1-5-47. *See*, ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 1988 OK 91, 768 P.2d 359.

7. Protestant has failed to come forward with any evidence to show the assessments are erroneous in any respect, and therefore, Protestant's protest to the assessments should be and the same are hereby denied.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is ORDERED that the protest of Protestant, TRUCKING COMPANY., be denied. It is further ORDERED that the amount in controversy be fixed as the deficiency due and owing.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.